

# PROCUREMENT QUICK REFERENCE

A COMPREHENSIVE GUIDE TO GETTING +  
**KEEPING** YOUR FEMA GRANT DOLLARS

## PURPOSE OF THIS PUBLICATION

To assist Subrecipients (Applicants) in identifying and applying the required Federal regulations for the procurement of funds, supplies, services, materials and construction projects when using Federal Emergency Management Agency (FEMA) funds. This publication is intended to be a companion piece to the three (3) Procurement ToolBoxes:

- Local + Tribal
- State Agencies
- Private Nonprofits (PNPs)

## INTENDED AUDIENCE

Louisiana local governing authorities, eligible PNPs, State agencies AND Federally recognized Tribal governing authorities.

Those receiving funding from FEMA Public Assistance (PA), FEMA Hazard Mitigation (HM) and Preparedness Grant Programs.



Getting  
it right!

# CITATIONS BY ENTITY

ENTITY	GRANT AWARDS OR PRESIDENTIAL DECLARATION BEFORE 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION ON OR AFTER 12/26/2014	
	REGULATION	COST PRINCIPLE	REGULATION	COST PRINCIPLE
STATE/LOCAL GOVERNMENTS	44 CFR 13.36	2 CFR 225	2 CFR 200.317 – 342	2 CFR 200.400 – 475
TRIBAL	44 CFR 13.36	2 CFR 225		
PRIVATE NONPROFITS (PNPS)	2 CFR 215.40 – 48	2 CFR 230		
HOSPITALS	2 CFR 215.40 – 48	2 CFR 230		
EDUCATIONAL INSTITUTIONS	2 CFR 215.40 – 48	2 CFR 230		

## STEP 1:

## WRITTEN PROCEDURES: WHAT TO DO BEFORE YOU PROCURE

Federal regulations **require** the Subrecipient (Applicant) to follow general procurement standards and have “documented procurement procedures” which include:

WRITTEN PROCEDURES OVERVIEW
<b>Contract Administration / Oversight</b>
<ul style="list-style-type: none"> <li>Employee + organizational conflicts of interest standards.</li> <li>Avoiding acquisition of unnecessary or duplicative items.</li> <li>Granting awards to responsible Contractors.</li> <li>Maintaining records to detail history of the procurement.</li> <li>Use of time + material (T + M) Contracts.</li> <li>Protest procedures.</li> <li>Selection procedures for procurement transactions.</li> <li>Methods for conducting technical evaluations.</li> </ul>
<b>Utilizing Small Businesses + Minority-Owned Firms + Women’s Business Enterprises</b>
<b>Procurement of Recovered Materials</b>
<b>Payroll + Overtime Policy</b>

# EQUAL OPPORTUNITY REQUIREMENTS

2 CFR 200.321 requires grant applications to take **all affirmative steps** to assure **small and minority businesses, women’s business enterprises**, and **labor surplus area firms** are used when possible. Specific steps to fulfill this vendor diversity requirement include:

- Placing **qualified** small and minority businesses and women business enterprises on **solicitation lists**;
- Assuring that small and minority businesses and women business enterprises are **solicited** whenever they are potential sources;
- Dividing total requirements**, when economically feasible, into **smaller tasks** or **quantities** to permit participation by small and minority business and women’s business enterprises;
- Establishing **delivery schedules** – where the requirement permits – which encourage participation by small and minority businesses and women’s enterprises;
- Using the **services and assistance**, as appropriate, of such organizations as the **Small Business Administration (SBA)** and the **Minority Business Development Agency** of the **U.S. Department of Commerce (DOC)**; and
- Requiring the **Prime Contractor**, if subcontracts are to be let, to take the **affirmative steps** listed in items (1) through (5) of this section.

## STEP 2:

# DETERMINE WHAT YOU NEED: CATEGORIES AND SIZE OF CONTRACTS

Category of purchase and size of the contract both determine the requirements for procurement.

### It is important to know:

- Check local procurement rules. If local rules are more restrictive than Federal or State law, follow the MOST restrictive rule.
- Responses ONLY count if they are responsive and responsible.
- FEMA requires a *minimum* of **two (2) responses** for **Contracts** in **excess** of the **Simplified Acquisition Threshold (SAT)** and a *minimum* of **three (3) responses** for Contracts *equal to or less* than the SAT.
  - » The SAT is currently \$150,000. This threshold is periodically adjusted for inflation. Check with your GOHSEP State Applicant Liaison (SAL) for current threshold. [SOURCE: 2 CFR 200.88]
- Currently, FEMA publishes the following guidance regarding procurement rules as applicable to Tribal governments: Irrespective of whether a Tribal government is designated as a Recipient or Subrecipient (Applicant), they will always follow the procurement standard found in this document.

CATEGORY OF PURCHASE	SIZE OF CONTRACT	FEDERAL REGULATIONS (44 CFR 13.36 + 2 CFR 200.318-323)	LOUISIANA STATE LAW REQUIREMENTS (LA RS 38:2211-2296)	LOCAL LAW
MATERIALS + SUPPLIES	Less than \$1,000 and \$1,000 - \$9,999	Quotes required.	No competitive procedure or cost analysis for commercial items. However, Louisiana Legislative Auditor (LLA) recommends the Best Practice of three (3) written quotes.	Check local procurement rules. If the rule is more restrictive than Federal or State law, follow the most restrictive rule.
	\$10,000 - \$30,000		Three (3) telephone or FAX quotes.	
	Greater than \$30,000		Bid required.	
Greater than \$100,000/ \$150,000				
PUBLIC WORKS	Less than OR equal to \$150,000	Quotes required.	No competitive requirement. However, LLA recommends an RFP process and/or three (3) solicited bids as a Best Practice.	
	Greater than \$150,000	Bid required.	Bid required - no minimum number of responses.	
SERVICES (EXCEPT FOR A/E)	Less than OR equal to \$150,000	Quotes required.	No competitive requirement. However, LLA recommends an RFP process and/or three (3) solicited bids as a Best Practice.	
	Greater than \$150,000	Bid required.		
A/E SERVICES	ANY size	Bid required.	Qualifications based procedure.	
STATE COOPERATIVE PURCHASE (SCP)	ANY size	Authorized under 44 CFR 13.36(b)(5) and 2 CFR 200.318(e)	<ul style="list-style-type: none"> <li>• Authorized under Louisiana Revised Statute (LA RS) Title 38:2212.1(F) (Louisiana bid law).</li> <li>• Limited to public entities as defined by LA RS 38:2211.</li> <li>• ONLY Office of State Procurement (OSP) SCP contracts.</li> <li>• Can be used for materials, supplies and equipment.</li> </ul>	

## CONTRACT EXECUTION

CONTRACTS TO USE	
LUMP SUM	Contract for work within a prescribed boundary with a <i>clearly</i> defined <b>scope of work</b> and a <b>total price</b> .
UNIT PRICE	Work done on an <b>item-by-item</b> basis, with cost determined <b>per unit</b> – e.g., box, cubic yard, etc.
COST PLUS FIXED FEE	Total known cost with a defined <b>fixed</b> fee <i>added</i> to the price.
TIME + MATERIALS (T + M)	Must make a <b>written</b> determination that <b>no other type of contract is suitable</b> . Must contain a <i>not-to-exceed</i> (ceiling) clause. Payment based on <b>hourly rate</b> schedule and <b>cost of materials</b> . <ul style="list-style-type: none"> <li>• Maintain <i>high</i> degree of <b>oversight</b>.</li> <li>• Contracts used for Emergency Protective Measures and Debris Operations <b>should not</b> exceed <b>70 hours continuous</b> of actual work <b>immediately</b> following the <b>emergency</b> or <b>disaster incident</b>.</li> </ul>
INTERGOVERNMENTAL AGREEMENTS	Subrecipients (Applicants) are <i>encouraged</i> to enter into State and local intergovernmental agreements for procurement or use of common goods and services. Visit LA eCat's website to search State contracts: <a href="https://wwwcfprd.doa.louisiana.gov/osp/lapac/ecat/dsp_eCatSearchLagov.cfm">https://wwwcfprd.doa.louisiana.gov/osp/lapac/ecat/dsp_eCatSearchLagov.cfm</a>

CONTRACTS TO AVOID	
PIGGYBACK	Piggybacks are <b>generally ineligible</b> . There is a <b>very rare exception</b> that allows the use of this type of contract. This should <i>only</i> be done in consultation with the GOHSEP Legal Team.
COST-PLUS-PERCENTAGE-OF-COSTS	Strictly prohibited.
COST-PLUS-PERCENTAGE-OF-CONSTRUCTION-COST	Strictly prohibited.

## STEP 3:

## PROPERLY PROCURE: FOUR PREFERRED METHODS OF PROCUREMENTS

There are **SEVERAL METHODS FOR PROCURING GOODS AND SERVICES**. The chart below identifies four (4) methods of procurement and the exception, and describes when to use each.

METHOD OF PROCUREMENT	WHEN TO USE
MICRO-PURCHASES	<ul style="list-style-type: none"> <li>Does not apply to grant awards OR <b>Presidential Declarations</b> prior to <b>12/26/2014</b>.</li> <li><b>Applies to</b> purchases <b>less than</b> OR <b>equal to \$3,000</b> (increased to <b>\$3,500</b> on 10/1/2015).</li> <li><b>No solicitation</b> required.</li> <li>Subrecipient (Applicant) determines <b>reasonableness</b>.</li> </ul>
SMALL PURCHASES	<ul style="list-style-type: none"> <li><b>Applies to</b> purchases <b>less than</b> OR equal to the Simplified Acquisition Threshold (SAT).<sup>1</sup></li> <li><b>Only quotes</b> required. A minimum of <b>three (3)</b> written or telephone quotes from qualified sources.</li> <li><b>Purchases of commercial products sold in substantial quantities to the general public.</b> <ul style="list-style-type: none"> <li>» <b>Limited</b> by State law to contracts for <b>supplies</b> and <b>materials</b> <i>less than \$10,000</i>.</li> <li>» Item must meet the definition of <b>commercial product</b>.</li> </ul> </li> </ul>
SEALED BIDS	<ul style="list-style-type: none"> <li>Preferred for construction.</li> <li><b>Fixed price</b>.</li> <li>Publicly <b>advertised</b> and publicly <b>opened</b>.</li> <li><b>Two (2)</b> or more <b>responsive</b> and <b>responsible</b> bidders. (Rejected bidders are not considered responsive.)</li> <li>Awarded to <b>lowest, responsive, responsible</b> bidder.</li> <li>Any OR all bids may be <b>rejected</b> for a sound, <b>documented</b> reason.</li> </ul>
COMPETITIVE PROPOSALS	<p><b>General</b></p> <ul style="list-style-type: none"> <li>Must have more than <b>one (1) responsive</b> and <b>responsible</b> bidder.</li> <li>Must be <b>publicized</b> to <b>maximum</b> extent practical.</li> <li>Must have <b>written</b> procedure for conducting evaluations and award (See REQUIRED Written Procedures).</li> </ul> <p><i>Request for Proposals (RFP)</i></p> <ul style="list-style-type: none"> <li><b>Price</b> a criteria for selection.</li> <li>Contract awarded to firm offering <b>best value</b>.</li> </ul> <p><i>Request for Qualifications (RFQ)</i></p> <ul style="list-style-type: none"> <li><b>Limited</b> to <b>Architecture and Engineering (A/E) services</b>.</li> <li><b>Qualifications</b> only criteria selection.</li> <li>Price negotiated <b>after</b> selection based on <b>cost analysis</b>.</li> </ul>
<b>EXCEPTION: NONCOMPETITIVE PROPOSALS</b>	<ul style="list-style-type: none"> <li>Available <b>only</b> from a <b>single source</b>.</li> <li><b>Used when insufficient</b> number of responses received.</li> <li><b>Used in emergency</b> or <b>exigent</b> circumstances.</li> <li><b>Always requires a cost analysis</b>.</li> </ul>

<sup>1</sup> The threshold is dependent upon the date of issuance of the grant or the Presidential Declaration. For grants awarded *before 12/26/2014*, the SAT is **\$100,000**. For grants awarded *after 12/26/2014*, the threshold is **\$150,000**. Adjusted annually for inflation according to the Consumer Price Index (CPI).

## STEP 4:

# CONTRACT EXECUTION: TYPES OF CONTRACT AND CONTRACT PROVISIONS

All **FEMA-funded Contracts** must include the following Contract provisions:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Equal Employment Opportunity (EEO)	13.36(i)(3)	-	-	All construction contracts awarded in excess <b>\$10,000</b> .
	-	215 Appendix A(1)	-	All contracts.
	-	-	Appendix II(C)	All construction contracts.
Compliance with Reporting Requirements	13.36(i)(7)	215.51 - 52	200.327 - 329	Contracts and/or grants must include the Subrecipient (Applicant) responsibility to provide the required reports, i.e. program performance, financial and progress reports.
Byrd Anti-Lobbying Amendment	-	215 Appendix A(7)	Appendix II(I)	Contractors that apply or bid for a contract must certify that it will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any Federal award.
Access to Records	13.36(i)(10)	215.53	200.336	Allows the Federal government, the Recipient (Grantee) or Subrecipient (Applicant) access to a Contractor's records. Subrecipient (Applicant) must include provision in contract stating this requirement by the Contractor.
Retention of Records	13.36(i)(11)	215.53	200.333	Where applicable, contract clause requiring the Subrecipient (Applicant) to retain all records for <i>at least</i> <b>three (3) years</b> from the date of the State's final expenditure report closing the disaster and a Contractor to retain records for <b>three (3) years</b> after the termination date of the contract (OCC PA Field Manual page 95 referring to responsibility of Contractor).  The State is subject to Audit under the <i>Stafford Act</i> for <b>up to three (3) years</b> after the closure of the entire disaster grant.
Energy Efficiency	13.36(i)(13)	215.44(a)(3)(vi)	—	Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan (LA RS 40:1730.49).
Prohibition of Awards to Debarred + Suspended Parties	13.35	215 Appendix A(8)	Appendix II(H)	Subrecipient (Applicant) must require and Contractor must make a declaration that the Contractor, its principles or affiliates (subcontractors), are currently not disqualified as a result of debarment or suspension. The two (2) places you should check are: <a href="http://lsibc.louisiana.gov">lsibc.louisiana.gov</a> <a href="http://SAM.gov">SAM.gov</a>
Procurement of Recovered Materials	13.36(i)(12)	215.16	Appendix II(J) See 200.322	This does not apply to Tribes and private nonprofits (PNPs). It only applies to local and State government entities and their Contractors if work involves the use of materials.
Bonding Requirements	13.36(h)	215.48(c)	200.325	Contracts for construction or facilities improvement in excess of the simplified acquisition threshold (SAT). The bonding requirements include: bid guarantee, performance bond and payment bond.
<i>Copeland Anti-Kickback Act</i>	13.36(i)(4)	-	Appendix II(D)	All construction or repair contracts.
	-	215 Appendix A(2)	Appendix II(D)	All construction or repair contracts in excess of <b>\$2,000</b> .
Termination for Cause + Convenience	13.36(i)(2)	215.48(b)	Appendix II(B)	Applies to all contracts in excess of <b>\$10,000</b> .

## STEP 4: CONTINUED

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Administrative + Legal Remedies for Violation or Breach of Contract	13.36(i)(1)	215.48(a)	Appendix II(A)	All contracts <i>greater than</i> the SAT.
Contract Work Hours + Safety Standards Act	13.36(i)(6)	215 Appendix A(4)	-	Construction contracts <i>greater than</i> <b>\$2,000</b> and for other contracts <i>greater than</i> <b>\$2,500</b> where mechanics and laborers are employed.
	-	-	Appendix II(E)	All construction Contracts <i>greater than</i> <b>\$100,000</b> where mechanics and laborers are employed.
Clean Air Act + Clean Water Act	13.36(i)(12)	215 Appendix A(6)	-	Applies to all contracts <i>greater than or equal to</i> <b>\$100,000</b> .
	-	-	Appendix II(G)	Applies to all contracts <i>greater than or equal to</i> <b>\$150,000</b> .

When **applicable**, contracts are **required** to include certain provisions as stated **below**:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Compliance with Regulations Pertaining to Patent Rights (Inventions) + Copyrights + Rights to Data	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The PA Program does not authorize any experimental, developmental or research work that would give rise to patents, inventions, copyrights or data. Therefore, there is NO REQUIREMENT for such clauses (OCC PA Field Manual page 94).
 Davis-Bacon Act	13.36(i)(5)	215 Appendix A(3)	Appendix II(D)	FEMA <b>DOES NOT</b> require compliance with this Act and; therefore, no clauses are required. However, if the disaster is large enough, Community Development Block Grant (CDBG) dollars may be granted by Congress to assist the State in recovery – which may include funding to repay State and local cost share. If this is the case, Davis-Bacon should be included in the contract.

# EMERGENCY PROCUREMENT

In emergency and exigent circumstances, there may be an immediate need for goods and services where noncompetitive or limited competition proposals [2 CFR 200.320(f)] would be the best procurement method to use.

**Emergency:** An emergency is a *threat* to health, life or safety.

**Exigency:** An exigency is NOT an emergency but requires **immediate** actions.

When a Subrecipient (Applicant) has cause and uses exigency or emergency procurement procedures, be reminded that once the documented exigency or emergency period ends, Subrecipients (Applicants) **must transition** to a procurement process that includes **full and open competition**.

All efforts must be **fully documented**.

EMERGENCY	EXIGENCY
<ul style="list-style-type: none"> <li>An unexpected and unusually dangerous situation that calls for immediate actions or an <b>urgent need for assistance or relief</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Something that is necessary in a particular situation that requires or demands <b>immediate aid or actions</b>.</li> </ul>
<ul style="list-style-type: none"> <li>Involve <b>threat</b> to life, public health or safety, improved property, and/or represents some other form of <b>dangerous situation</b>.</li> </ul>	<ul style="list-style-type: none"> <li><b>Not limited</b> to life, health or safety, improved property and/or some other form of dangerous situation.</li> </ul>
<ul style="list-style-type: none"> <li>The use of emergency procurement procedures is an <b>exception</b> and should be used only during the <b>actual emergency circumstances</b>.</li> <li><b>Documentation</b> supporting the existence of the emergency circumstances must be maintained by the Subrecipient (Applicant).</li> </ul>	
<ul style="list-style-type: none"> <li>Costs must still be <b>reasonable</b>.</li> </ul>	
<ul style="list-style-type: none"> <li>Procurement must still comply with all other procurement standards including:               <ul style="list-style-type: none"> <li>» <b>Contract clauses</b>;</li> <li>» <b>Federal bonding requirements</b> (construction / facility improvement);</li> <li>» Awarded to a <b>responsible contractor</b>;</li> <li>» Cost is <b>fair and reasonable</b>; and</li> <li>» <b>No prohibited contracts</b> used.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li><b>Do not use a piggyback contract*</b> or give a <b>local preference</b>.               <ul style="list-style-type: none"> <li>* The post-award use of a contract that allows for an entity that was not contemplated in the original procurement to purchase the same supplies or equipment through that original document or process.</li> </ul> </li> </ul>	

To get a copy of an **emergency contract template** for use during emergency or exigent circumstances, download a copy of GOHSEP's PROCUREMENT TOOLBOX through the Link/QR code on the back of this brochure. We recommend keeping **hard copies** for use during disasters.

# REFERENCES

CFR  
[ecfr.gov](http://ecfr.gov)

Disaster Operations Legal Reference (DOLR) version 2.0  
[fas.org/irp/agency/dhs/fema/dolr.pdf](http://fas.org/irp/agency/dhs/fema/dolr.pdf)

FEMA Procurement Disaster Assistance Team (PDAT)  
[fema.gov/procurement-disaster-assistance-team](http://fema.gov/procurement-disaster-assistance-team)

FEMA Public Assistance Guide  
[fema.gov/media-library/assets/documents/25651](http://fema.gov/media-library/assets/documents/25651)

Louisiana Department of Economic Development (LED)  
[opportunitylouisiana.com](http://opportunitylouisiana.com)

LED: Small Businesses  
[opportunitylouisiana.com/index/small-business](http://opportunitylouisiana.com/index/small-business)

Louisiana Department of Transportation and Development (DOTD) – Disadvantaged Business Enterprise (DBE) Certified Contractors  
[wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Administration/Compliance/Pages/DBE\\_Certification.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx)

Louisiana Legislative Auditor (LLA)  
[lla.la.gov/legalFAQs](http://lla.la.gov/legalFAQs)

Louisiana Revised Statutes  
[legis.la.gov/legis/LawSearch.aspx](http://legis.la.gov/legis/LawSearch.aspx)

*Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Public Law 93-288) as amended  
[fema.gov/media-library/assets/documents/15271](http://fema.gov/media-library/assets/documents/15271)

Small Business Administration Assistance Resources (SBA)  
[sba.gov/tools/local-assistance/LA/local-resources](http://sba.gov/tools/local-assistance/LA/local-resources)

U.S. Department of Commerce’s Minority Business Development Agency  
[mbda.gov](http://mbda.gov)

Women’s Business Centers  
[sba.gov/tools/local-assistance/wbc](http://sba.gov/tools/local-assistance/wbc)

Women’s Business Council Gulf Coast  
[wbcsouth.org/](http://wbcsouth.org/)

Visit [gohsep.la.gov/GRANTS/PROCUREMENT/Overview](http://gohsep.la.gov/GRANTS/PROCUREMENT/Overview) or SCAN here to learn more about PROCUREMENT and download a copy of the PROCUREMENT TOOLBOXES.



**What else do I need to know?**

**It is YOUR responsibility to have a working knowledge of AND to comply with local, Tribal, State, Federal – and your own – procurement guidelines in order to get and keep all funds you were approved to receive!**

**You must ensure that your Contractors also follow all applicable procurement guidelines.**

**For more information or help with your procurement needs, visit [fema.gov](http://fema.gov) (search for procurement guidelines 44 CFR 13.36 and 2 CFR 215.44-48 for grants awarded or Presidential Declarations before 12/26/2014 and 2 CFR 200 for grants awarded or Presidential Declarations after 12/26/2014) OR contact your organization’s purchasing office OR GOHSEP at [gohseplegal@la.gov](mailto:gohseplegal@la.gov).**